

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SHORELINE)
SUBSTANTIAL DEVELOPMENT PERMIT)
ISSUED BY THE TOWN OF FRIDAY)
HARBOR TO DERRY AND BRAD)
GISLASON AND BILL GIESY,)
)
NORM and JOAN SCHWINGE,)
)
Appellants,)
)
and)
)
STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY,)
)
Appellant/Intervenor,)
)
v.)
)
TOWN OF FRIDAY HARBOR, DERRY)
and BRAD GISLASON, and)
BILL GIESY,)
)
Respondents.)

SHB No. 84-31

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

This matter, the request for review of a shoreline substantial development permit granted by the Town of Friday Harbor to Derry and Brad Gislason and Bill Giesy, came on for hearing before the

1 Shorelines Hearings Board, Lawrence J. Faulk, Gayle Rothrock, Wick
2 Dufford, Nancy R. Burnett, Rodney M. Kerslake, and Beryl Robison,
3 Members, convened at Friday Harbor, Washington, on November 20 and 21,
4 1984. Administrative Appeals Judge William A. Harrison presided.
5 Closing argument was presented to the Board convened at Seattle,
6 Washington, on February 20, 1985.

7 Appellants Schwinge were represented by their attorney, Peter J.
8 Eglick. Appellant State of Washington, Department of Ecology, was
9 represented by Jay J. Manning, Assistant Attorney General.
10 Respondents Gislasons and Giesy were represented by their attorney,
11 Richard W. Pierson. Respondent Town of Friday Harbor was represented
12 by Donald E. Eaton, Town Attorney. Reporter Gene Barker provided
13 court reporting services.

14 Witnesses were sworn and testified. Exhibits were examined. From
15 the testimony heard and exhibits examined, the Shorelines Hearings
16 Board makes these

17 FINDINGS OF FACT

18 I

19 This matter arises in the Town of Friday Harbor on San Juan Island.

20 II

21 Running more or less parallel to the Town's waterfront is Front
22 Street which intersects at right angles with the foot of Spring
23 Street. The Town's long-established central business district is
24 aligned along both sides of Spring Street.

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III

The site in question is located at Spring and Front Streets, upland of Front. It is, so to speak, the cornerstone of business locations on that side of Spring Street. Its counterpart on the other side of Spring Street would be the building which houses the Raven House Gallery and other retail stores and restaurants.

IV

The site fronts 100 feet along Front Street and 75 feet along Spring Street. It is chiefly vacant. There is one small building containing a T-shirt business known as the "Shirt Shack" and also an ice machine.

V

The site is not a waterfront lot. Across Front Street (waterward) from the site is a restaurant, marina and gas dock. On the other side of Spring Street and across Front from the Raven House Gallery are a restaurant, the Washington State Ferry Terminal and an extensive development of condominiums and retail shops known as Cannery Village. These uses across Front Street provide public access in varying measures at each of their waterfront locations.

VI

Moving inland up Spring Street from the site there is a realty office followed by the San Juan Inn which is owned by appellants Mr. and Mrs. Schwinge. The Schwinges have recently constructed a parlor within their Inn for the use of their guests. Presently, the view from the parlor, which is across the site, encompasses nearly all of

1 the harbor.

2 VII

3 On September 1, 1983, respondents Derry and Brad Gislason and Bill
4 Geisy applied to the Town for a shoreline substantial development
5 permit. They proposed to develop an inn on the site in question. It
6 would consist of four levels, one for parking and three for guest
7 rooms. It would contain 36 units as proposed to the Town. At the
8 hearing before this Board the applicants expressed a willingness to
9 reduce the number of units to 34 so as to allow 13 spaces for cars on
10 its parking level.

11 VIII

12 Within the central business district along Spring Street in the
13 vicinity of the site, buildings are uniformly two stories in height.
14 The proposed development with parking level and three stories would,
15 by virtue of its third story, block the view from the San Juan Inn
16 parlor. This would deprive substantial numbers of people, guests at
17 the San Juan Inn, from enjoying that view of the harbor. The public's
18 view of the harbor from Spring Street would also be reduced
19 proportionately more than if the proposal were of the two-story scale
20 common to the area.

21 IX

22 Transient accommodations on San Juan Island are often fully
23 occupied, or nearly so, during the summer tourist season.

24 X

25 The proposed development would be within shorelines designated

1 "urban" by the Friday Harbor Shoreline Master Program (FHSMP).

2 XI

3 The proposed development is "commercial" as that term is used in
4 the FHSMP.

5 XII

6 The FHSMP permits commercial use in the urban environment as
7 follows:

8 Commercial development shall be permitted in the
9 Urban Environment subject to the policies and
10 regulations contained in this Master Program...
(Emphasis added.) FHSMP Section 5.07 (Urban), p.30.

11 XIII

12 The pertinent policies and regulations of the FHSMP relating to
13 commercial development are:

14 Policies

- 15 1. Commercial development on the shorelines should
16 consist of uses which are water dependent and/or
17 uses which will provide an opportunity for
substantial numbers of people to enjoy the
shorelines.
- 18 2. New commercial developments should be encouraged
19 to locate in those areas where commercial uses
already exist.
- 20 3. An assessment should be made of the effect any
21 proposed commercial activity and/or structure
will have on a scenic view significant to a given
area or enjoyed by a significant number of people.
- 22 4. Parking facilities should be placed inland, away
23 from the water's edge and recreational beaches,
24 and, where necessary, should be screened to
minimize their visual impact on the shorelines
25 and should include devices to control surface
runoff and prevent pollution of nearby water
bodies.

5. Commercial developments that abut the water's edge should provide visual and/or physical access to the shoreline for the public.
6. All commercial developments should respect the natural resources and systems of the shoreline environment.

General Regulations

1. Applications for commercial development shall include a detailed statement explaining the nature and intensity of the water dependency or orientation of the proposed activity. Such statement shall include at least the following:
 - a. nature of the commercial activity;
 - b. need for shoreline frontage;
 - c. proposed measures to enhance the relationship of the activity to the shoreline;
 - d. proposed provisions for public visual and/or physical access to the shoreline.

FHSMP Section 5.07, page 29.

XIV

Other pertinent policies of the FHSMP are these relating to economic development:

3. Anyone who seeks to establish a commercial or industrial activity within any shoreline area should bear the burden of demonstrating that the upland areas are not feasible for the proposed use and that the proposed use will be compatible with the Master Program.
4. Major development or construction along the shorelines, other than single family residences, should not be permitted except where the sponsor thereof, public or private, can demonstrate overriding public necessity or public benefit.
7. The location, density, configuration, setback and other aspects of all shoreline developments should be appropriate to the site and vicinity

1 and should conform to the physical limitations of
2 the site.

3 PHSMP Section 3.03, page 5.

4 and this relating to conservation:

5 4. Preservation of scenic views and vistas should be
6 encouraged.

7 PHSMP Section 3.07, page 8.

8 XV

9 In the intersection of Spring and Front Streets there is a Town
10 park, circular in shape, so that a traffic circle forms the hub of the
11 intersection. The flow of traffic through this circle is the key
12 factor in blending traffic from the State Ferry, the central business
13 district and the 400 or so slips of the Port of Friday Harbor Marina,
14 which is on the same arm of Front Street as the site. Presently there
15 is 35 feet of street clearance between the park and the curb adjacent
16 to the site. Although the application made to the Town does not
17 clarify the point, a later rendition of the proposal indicates that
18 this street clearance would be reduced to 17 feet by the proposal.
19 The later rendition also shows on-street, angle parking on Front
20 Street. This would reduce, accordingly, the width of Front Street
21 where it connects the Port's marina with the center of the Town.

22 XVI

23 The present street widths and clearances at the traffic circle
24 result in traffic congestion, especially during the busy summer months.

XVII

Pertinent traffic policy within the FHSMP states:

5. Roads should be maintained at widths consistent with safety standards for limited speeds.

This policy furthers the broader goal:

To develop sure, safe economical transportation systems to assure efficient movement of people, with minimum disruption of the shoreline environment and minimum conflict between different types of users.

FHSMP Section 3.05, pages 6-7.

XVIII

Pertinent parking regulations of the FHSMP are:

1. Parking areas shall not be located on shorelines unless it can be shown that the parking area is an essential accessory to a permitted use and that it could not feasibly be located on an upland site; provided that parking areas designed to serve ferry terminals shall be permitted on the shorelines.
2. Upland parking areas serving shoreline uses shall be linked to said uses by safe, pedestrian access.

FHSMP Section 5.19, page 58 made applicable by Section 5.07, Regulation 6, page 30.

XIX

The Town required preparation of an environmental impact statement (EIS) following its declaration that the proposal would significantly affect the quality of the environment. The EIS made reference to the "no action" alternative but did not describe any other alternative to the proposal. Reasonable alternatives exist to develop the site at lower environmental cost as regards view obstruction and traffic circulation.

1 XX

2 The EIS was not circulated to the State Department of Ecology for
3 comment at the draft stage.

4 XXI

5 Following receipt of the shoreline permit application, this notice
6 was published on September 7 and 14, 1983, in a newspaper of general
7 circulation:

8 PUBLIC NOTICE

9 NOTICE OF APPLICATION FOR
10 SHORELINE MANAGEMENT
SUBSTANTIAL DEVELOPMENT PERMIT

11 Notice is hereby given that Brad Gislason, Derry
12 Gislason and Bill Giesy have filed an application for
13 a substantial Development Permit for property owned
14 by San Juan Lodge No. 175 F. & A.M., Friday Harbor,
15 Washington. Said development permit would be for the
16 construction of a 36 unit inn located at the
17 southwest corner of Spring and Front Streets within
18 Section 13 of Township 35 North, Range 3 West W.M.,
19 in Friday Harbor, San Juan County, Washington. Said
20 development is not within the harbor of Friday Harbor
21 and/or its associated wetlands. Any person desiring
22 to express his views or to be notified of the action
23 taken on this application should notify the Town
24 Administrator in writing of his interest within
25 thirty days of the final date of publication of this
26 notice which is September 14, 1983.

19 Written comments must be received by October 14, 1983.
20 No. 111(2T) September 7, 14, 1983
21 (Emphasis added.)

21 This notice was republished on February 1 and 8, 1984.

22 XXII

23 On April 4, 1984, the following notice announcing a public hearing
24 before the Town Council was published in the newspaper:

25
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1 NOTICE OF PUBLIC HEARING
2 A SHORELINE DEVELOPMENT PERMIT
3 FRONT STREET INN

4 Notice is hereby given that Derty and Brad Gislason
5 and Bill Giesy d/b/a Front Street Inn has filed an
6 application for a substantial development permit for
7 the development of a motor inn at the intersection of
8 Spring and Front Streets, Friday Harbor, Washington.
Said development is proposed to be within the Harbor
of Friday Harbor and/or its associated wetlands. The
Town of Friday Harbor Town Council will review said
proposal on April 5, 1984, at Town Hall 60 Second
Street at 8:00 P.M.

No. 327(IT)

April 4, 1984

9 Apparently, on the following day, April 5, 1984, the Town Council did
10 meet and remand the matter to the Planning Commission. There is no
11 evidence that public comment was received.

12 XXIII

13 On June 21, 1984, without notice that a public hearing would
14 occur, the Town received the recommendation of its Planning Commission
15 that the proposed development be denied. It also accepted public
16 comment, including that of the project applicants and persons present
17 who were opposed to the project. It acknowledged, however, that the
18 proceeding was not a public hearing. The Town Council then approved
19 the application. Appellants, Mr. and Mrs. Schwinge filed their
20 request for review on July 5, 1985. Department of Ecology intervened
21 as party appellant.

22 XXIV

23 The Town Council's approval came to the attention of The Friends
24 of the San Juan, a non-profit corporation organized to promote land
25 use planning in San Juan County. Lacking notice that the Town Council

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1 would conduct a public hearing, the Friends directed their comments in
2 opposition to the proposal to the Department of Ecology. There was
3 then no longer a local forum in which to express that opposition.

4 XXV

5 Any Conclusion of Law which is deemed a Finding of Fact is hereby
6 adopted as such.

7 From these Findings of Fact the Board comes to these

8 CONCLUSIONS OF LAW

9 I

10 Notice. A notice of application for shoreline development permit
11 must be provided by the local government, in this case the Town. RCW
12 90.58.140(4). The form of notice for publication is prescribed by
13 Department of Ecology (DOE) rule at WAC 173-14-070. The enigmatic
14 notice published four times in September, 1983, and February, 1984,
15 wherein it was stated that the proposal was not within wetlands of the
16 harbor was incorrect. Wetlands are defined by the Shoreline
17 Management Act (SMA) to include the 200 feet landward from the
18 ordinary high water mark. RCW 90.58.030(2)(f). The parties have
19 stipulated that the proposal would be within statutory wetlands, and
20 the application for shoreline permit was made for that reason.
21 Neither can the notice published by the Town on April 4, 1984, be
22 called correct notice of application as it did not state the statutory
23 30 days thereafter for public comment. RCW 90.58.140(4). The
24 proceeding of the Town Council on June 21, 1984, though perhaps
25 unintentionally, became a public hearing when comment received there

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1 augmented the basis upon which the Council approved this permit. No
2 notice of this public hearing was provided, though the same is
3 required by the SMA. RCW 90.58.140(4)

4 (b)(iii). The aggregate effect of these errors was to mislead
5 interested persons as to the issue and their opportunity to comment
6 upon it. Notice of the shoreline application and public hearing was
7 inconsistent with RCW 90.48.140(4) and WAC 173-14-070.

8 II

9 Environmental Impact Statement. The environmental impact
10 statement (EIS) provided by the Town for this proposal failed to
11 present reasonable alternatives that could feasibly attain or
12 approximate the proposal's objectives but at a lower environmental
13 cost, particularly in the areas of view obstruction and traffic
14 circulation. The EIS is inconsistent with WAC 197-10-440(12)(a)(1).
15 See also WAC 197-11-440(5)(b). The draft EIS was not sent to DOE and
16 the EIS is thus inconsistent with WAC 197-10-460(1)(a). See also WAC
17 197-11-455(1)(a). The EIS in this matter is inadequate to meet the
18 requirements of RCW 43.21C.030(2)(c)(iii) and (d) and the above
19 implementing rules.

20 III

21 Use of the Site for an Inn. Appellants contend that an inn is an
22 inappropriate use for the site because 1) it is not water dependent
23 and 2) it does not provide access to the shoreline except by the view
24 provided to guests. We disagree.

25 First, neither the statute nor the Friday Harbor Shoreline Master
26 Program (FHSMP) call for mandatory water dependent uses. To the

1 contrary, uses are allowed which provide an opportunity for
2 substantial numbers of people to enjoy the shorelines. RCW 90.58.020
3 and FHSMP Section 5.07, Policy 1, page 29. An inn would be consistent
4 with these provisions and FHSMP Section 5.07, Policy 2, page 29, that
5 new commercial developments should be encouraged to locate in those
6 areas where commercial use already exist. (See Finding of Fact XIII,
7 supra.)

8 Second, FHSMP Section 5.07, Policy 5, page 29, provides that
9 commercial developments that abut the water's edge should provide
10 visual and/or physical access to the shoreline for the public. Our
11 holding in Gislason v. Town of Friday Harbor, SHB No. 81-22 (1981) was
12 consistent with this policy in that we reversed a permit for a motel
13 on a site abutting the water's edge where no substantial access to the
14 shorelines was provided for non-guests. It is likewise consistent
15 with the above policy and RCW 90.58.020 to conclude, as we do now,
16 that where a site like this one does not abut the water's edge but
17 intervening uses which do abut the water do provide shoreline access
18 for all, that the use on this site may consist of an inn without
19 substantial access for non-guests.

20 The use of the site for an inn has not been shown to be
21 inconsistent with the SMA or FHSMP.

22 IV

23 Height and View. While an inn, as a type of use, appears to be
24 appropriate to the site, it is so chiefly for the visual access to the
25 shoreline which it will provide to a substantial number of people.

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1 See RCW 90.58.020 and FHSMP Section 5.07, Policy 1, page 29 as
2 discussed in Conclusion of Law III, above. The specific inn being
3 proposed, however, is of a scale which exceeds that in the central
4 business district where it would be located. Because of this it
5 obliterates the visual access to the shoreline now enjoyed by the
6 substantial number of people who are guests at the San Juan Inn,
7 located landward of the site. The logic of this, if carried further,
8 would permit an out-of-scale structure waterward of the site to
9 obliterate the water view of the proposed inn. We conclude that the
10 proposed inn, by being of a greater scale than its associated
11 buildings and thereby despoiling the scenic shoreline view now enjoyed
12 by a significant number of people, is inconsistent with FHSMP Section
13 5.07, Policy 3, page 29 and FHSMP Section 3.03 Policy 7, page 5, and
14 FHSMP Section 3.07 Policy 4, page 8, all as made applicable to
15 commercial development by the Regulation for Urban Environment of
16 Section 5.07, page 30. (See Findings of Fact XII, XIII, and XIV,
17 supra.)

18 V

19 Traffic and Parking. The original site diagram (Exhibit A-5)
20 included in the permit application is without information as to 1) how
21 far the proposed development would protrude into adjacent street right
22 of way or 2) any final parking plan. A later rendition (Exhibit R-2)
23 does show the relation of the proposed development to the right of
24 way, and has some (but not all) parking. It is unclear whether the
25 Town considered this later rendition. Lacking a final parking plan,

1 neither diagram is adequate for the Town nor this Board to determine
2 consistency of the proposed development with the traffic and parking
3 policy and regulations of the FHSMP. See FHSMP Section 3.05, Policy
4 5, pages 6-7 and FHSMP Section 5.19, page 58 as made applicable to
5 commercial development by the Regulation for Urban environment of
6 Section 5.07, page 30, as set forth in Findings of Fact XII, XVII and
7 XVIII, above. This determination should precede the granting of any
8 shoreline permit and should not be postponed because parking is also a
9 subject under other Town ordinances.

10 VI

11 In summary, the shoreline permit under review was granted without
12 adequate notice or an adequate EIS or an adequate application, and is
13 inconsistent with the SMA and FHSMP regarding scale of the proposal
14 and view obstruction. It has not been shown, however, that an
15 appropriate application for an inn on this site could not be granted
16 in the future. The permit under review should be reversed.

17 VII

18 Any Finding of Fact which is deemed a Conclusion of Law is hereby
19 adopted as such.

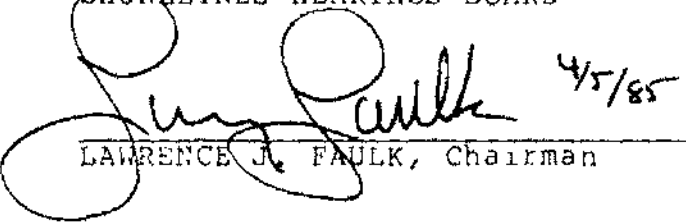
20 From these Conclusions of Law the Board enters this
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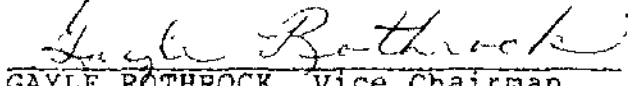
ORDER


The shoreline substantial development permit granted by the Town of Friday Harbor to Derry and Brad Gislason and Bill Giesy (No. 31) is hereby reversed.

DONE at Lacey, Washington, this 11th day of April, 1985.

SHORELINES HEARINGS BOARD

 4/5/85
LAWRENCE J. FAULK, Chairman



GAYLE ROTHROCK, Vice Chairman


WICK DUFFORD, Lawyer Member


NANCY R. BURNETT, Member


RODNEY H. KERSLAKE, Member


BERYL ROBISON, Member


WILLIAM A. HARRISON
Administrative Appeals Judge

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